IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 81 of 2006
With
CIVIL APPLICATION No. 3961 of 2006
In
APPEAL FROM ORDER No. 81 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UMESHBHAI KALUBHAI
Versus
GITANJALI PARK SOCIETY OWNERS ASSOCIATION AND OTHERS

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Appearance :
MR SUNIT SHAH with MR PREMAL R JOSHI for Appellants, MR DHIRAJ M PATEL for Appellants.
MR PC KAVING with MR JR SHAH for Respondent No.1.
NOTICE SERVED BY DS for Respondent Nos. 2 - 3.
None for Respondent Nos.4, 6.
DELETED for Respondent No.4.2.1
DS AFF.NOT FILED (R) for Respondent No.4.2.2
RULE SERVED for Respondent Nos.5.2.1,5.2.2 - 6, 6.2.2,6.2.3.
RULE UNSERVED for Respondent No.5.2.3
MR JB PRAJAPATI for Respondent No.7.
MR ASHISH M DAGLI for Respondent No.7.
MR HARSHAL M SHAH for Respondent No.7.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 26/02/2007

ORAL JUDGMENT

By filing this appeal, the appellant, who is the heir of original defendant no.6 (b) of Civil Suit No.2588/2004 has challenged the judgment and order passed by the learned trial Judge by which the learned trial Judge has partly granted interim injunction application submitted by the original plaintiff. Aforesaid suit is filed by the plaintiff for declaration, permanent injunction and also for getting a decree for specific performance. Case of the plaintiff is that 65 members of plaintiff society known as Geetanjali Park Society had purchased a parcel of land from defendant nos. 1 to 5 by entering into agreement to sell in their favour. Though the contract was subsisting, defendants no.1 to 5 sold away the disputed property to defendant no.6. The plaintiff has, therefore, filed aforesaid suit with a prayer that the sale deed executed by said defendants in favour of defendant no.6 may be quashed and set aside and suit of specific performance may be decreed. Said suit is resisted by the defendants on various grounds. In the aforesaid suit, the plaintiff pressed into service interim injunction application.

2) Learned trial Judge after hearing the concerned parties, partly allowed the said application and the defendants were restrained from transferring, selling or alienating the suit property to a third party during the pendency of the suit. It is the aforesaid order, which is impugned in this Appeal from Order.

3) At the time of hearing of this Appeal from Order, there is a consensus prevailing between the parties. It is submitted by the parties that the order of the trial Court may be modified to the extent that in

case the concerned defendant transfer or alienate or deal with the suit property in any manner and if any transaction is entered into in connection with the suit property, the same shall be subject to the result of the suit and if any third party rights are created by any of the defendants, name of such third party may be disclosed to the Court within a period of 15 days from the date of such transaction and plaintiff may be given liberty to join such purchaser as a party to the suit so that an effective decree can be passed by the trial Court.

4) In view of the consensus prevailing between the parties, it is not necessary to examine the merits in detail. Order of the trial Court is modified to the extent that the defendants are permitted to deal with the property, however, if the suit property is transferred or alienated in any manner, name of purchasers may be disclosed by the concerned defendants to the trial Court within a period of 15 days from such transaction. It will be open to the plaintiff to join such purchaser as a party in the suit so that in case the suit is decreed, the trial Court can pass an effective decree against such purchaser. It is also clarified that whatever may be the transactions, that may take place during the pendency of the suit, the same shall be subject to the result of the suit. Accordingly, this Appeal from Order is disposed of with no order as to costs.

5) In the facts and circumstances of the case, suit is expedited and, if possible, the trial Court may try to dispose of the suit by April, 2008.

6) In view of above order on main appeal, no order on Civil Application No.3961/2006.

(P.B.Majmudar, J.)

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